



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

March 31, 1994

Mr. Peter G. Smith
Law Offices of Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

OR94-155

Dear Mr. Smith:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), Government Code chapter 552. We assigned your request ID# 23158.

The City of Richardson (the "city"), which you represent, has received a request for information relating to litigation in which the city is involved, city insurance policies, and attorney fee bills. You contend that you are unable to identify all of the records that the requestor seeks, because the request is ambiguous. However, you have been able to identify some of the requested information and have submitted it to us for review. You claim that sections 552.101, 552.102, 552.103(a), and 552.107 of the act except the submitted information from required public disclosure.¹

Numerous opinions of this office have addressed situations where a governmental body has received a written request for information, but where the requested information is either unidentifiable or the request is "overbroad." For instance, in Open Records Decision No. 23 (1974), this office determined that "an agency may ask for a clarification if it cannot reasonably understand a particular request." More recently, in Open Records

¹You also advise us that the city does not possess some of the requested information and that release of some of the requested information would require the city to compile existing information or to do research. We note that, as a general matter, the act cannot apply to a document that does not exist. Open Records Decision No. 452 (1986). Moreover, the act does not ordinarily require a governmental body to obtain information not in its possession, Open Records Decision No. 558 (1990), to compile or prepare new information, Open Records Decision No. 416 (1984), to answer factual questions, Open Records Decision No. 379 (1983), or to perform research, Open Records Decision No. 563 (1990).

Decision No. 561 (1990) at 8-9, this office summarized the policy of this office with respect to requests for unidentifiable information and "overbroad" requests. This office stated in that opinion:

We have stated that a governmental body must make a good faith effort to relate a request to information held by it. Open Records Decision No. 87 (1975). It is nevertheless proper for a governmental body to require a requestor to identify the records sought. Open Records Decision Nos. 304 (1982); 23 (1974). For example, where governmental bodies have been presented with broad requests for information rather than specific records we have stated that the governmental body may advise the requestor of the types of information available so that he may properly narrow his request. Open Records Decision No. 31 (1974).

Open Records Decision No. 561 at 8-9. This line of opinions recognizes the practical difficulties governmental bodies may encounter in fulfilling their statutory duties under section 552.301(a) of the Government Code. Moreover, these opinions speak to the requirement set forth in section 552.224 that "the officer of public records or the officer's agent shall give to a person requesting public records all reasonable comfort and facility for the full exercise of the right granted by this chapter," *see, e.g.*, Open Records Decision Nos. 87 (1975) at 5; 23 (1974), and the policy stated in section 552.227 that "an officer for public records or the officer's agent is not required to perform general research," *see, e.g.*, Open Records Decision Nos. 563 at 8-9, 555 (1990); 379 (1983); 347 (1982). If you have made a good faith effort to relate the request to information in the city's possession and have helped the requestor to clarify his request by advising him of the types of information available, you have fulfilled your obligations under the act.

Next, we address your assertion that section 552.101 excepts from required public disclosure the requested insurance policy information. Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You assert section 552.101 in conjunction with section 101.104 of the Civil Practice and Remedies Code, which creates a limited exception to discovery for the existence and amount of insurance held by a governmental body. In Open Records Decision No. 575 (1990), this office determined that section 552.101 of the act does not encompass work product, investigative, or other discovery privileges. Such protection may exist under section 552.103(a), if that exception applies. Open Records Decision No. 575. Section 101.104 of the Civil Practice and Remedies Code is a discovery privilege and does not fall within the section 552.101 exception. Accordingly, you may not withhold the requested insurance policy information under section 552.101.

Next, you assert that section 552.102 excepts some of the attorney fee bills from required public disclosure. Section 552.102 excepts "information in personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Section 552.102 protects information only if its release would cause an invasion of

privacy under the test articulated for section 552.101 of the act by the Texas Supreme Court in *Industrial Foundation of the South v. Texas Industrial Accident Board*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). See *Hubert v. Harte-Hanks Texas Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Under the *Industrial Foundation* case, information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. Generally, the public has a legitimate interest in the job qualifications of public employees. Open Records Decision Nos. 470, 467 (1987). Personnel information not protected by common-law privacy includes, for example, applicants' and employees' educational training, names and addresses of former employers, dates of employment, kind of work, salary, and reasons for leaving, names, occupations, addresses and phone numbers of character references, job performance or ability, birth dates, height, weight, marital status, and social security numbers. See Open Records Decision No. 455 (1987); see also Open Records Decision Nos. 470, 467; 444 (1986); 421 (1984); 405 (1983). But see Open Records Decision No. 622 (1994) (some social security numbers may be confidential under federal statutory law). We have examined the information submitted to us for review. We conclude that it does not contain any information that is intimate or embarrassing. Accordingly, this information may not be withheld from required public disclosure under section 552.102 of the act.

Next, we address your assertion that section 552.103(a) excepts some of the requested information from required public disclosure. Section 552.103(a) excepts from required public disclosure information

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employees of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Section 552.103(a) was intended to prevent the use of the act as a method of avoiding the rules of discovery in litigation. Attorney General Opinion JM-1048 (1989) at 4. The litigation exception enables a governmental body to protect its position in litigation by requiring information related to the litigation to be obtained through discovery. Open Records Decision No. 551 (1990) at 3. Information may be excepted from public disclosure by section 552.103(a) if litigation is pending or reasonably anticipated and the information relates to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.). Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a)

should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 at 5; 511 (1988) at 3.

You claim that the requested attorney fee bills relate "to pending litigation . . . [and] to litigation in which the city is a party, and could compromise the litigation strategy and settlement negotiations." Your arguments amount to no more than a restatement of the section 552.103(a) exception and provide no facts necessary to a conclusion that the exception applies. Accordingly, we conclude that you have failed to meet your burden under section 552.103(a) and that the city may not withhold any of the requested information under that exception.

Finally, you claim that section 552.107 excepts some of the requested information from required public disclosure.² Section 552.107 excepts information from required public disclosure if:

(1) it is information that the attorney general or an attorney of a political subdivision is prohibited from disclosing because of a duty to the client under the Rules of the State Bar of Texas; or

(2) a court by order has prohibited disclosure of the information.

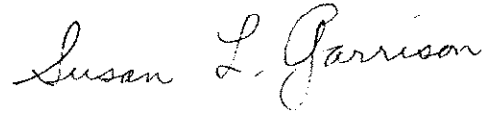
Attorney-client communications, however, may be withheld only to the extent that such communications document confidences of governmental representatives or reveal the attorney's legal opinion and advice. Open Records Decision No. 589 (1991) (addressing attorney fee bills). Records of calls made, meetings attended, or memos sent, so long as no legal advice or client confidences are revealed, may not be excepted under section 552.107. *Id.*

You have not marked the information submitted to us for review to indicate which portions you believe are excepted under section 552.107. However, we have examined the information submitted to us for review and have marked the information that we conclude clearly documents confidences of governmental representatives or reveals an attorney's legal opinion and advice. The marked information may be withheld from required public disclosure under section 552.107 of the act. The remaining information, to the extent that we are able to determine, merely contains records of calls made, meetings attended, or memos sent, and does not reveal client confidences or an attorney's legal advice to a client. Accordingly, the remaining information submitted to us for review must be released in its entirety.

²You also assert section 552.101 of the Government Code in connection with the attorney-client privilege. This privilege is most properly asserted in connection with section 552.107 of the act. Open Records Decision No. 574 (1990).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison
Assistant Attorney General
Open Government Section

SLG/GCK/rho

Enclosures: Marked documents

Ref.: ID# 23158
ID# 23425
ID# 24006

cc: Mr. Mark Bennett
339 Towne House Lane
Richardson, Texas 75081
(w/o enclosures)